ADLAN v. PUBLIC PROSECUTOR

[A.Cr.J. (Ong J.) November 14, 1964]

[Ipoh — Criminal Appeal No. 75 of 1964]

Criminal Procedure — Previous conviction — Introduction of evidence of — Notice — Conviction under Minor Offences Ordinance, 1955, s. 29(1) — Irregularity — Not curable under Criminal Procedure Code (Cap. 6), s. 422.

In this case the appellant appealed against his conviction and sentence of one month's imprisonment on a charge under section 29(1) of the Minor Offences Ordinance, of being found in possession of a bicycle reasonably suspected of being stolen property and being unable to account satisfactorily how he came by the same. In the course of the trial, the prosecution introduced evidence of a previous conviction by an exhibit, which was a notice to the effect that "in view of your previous conviction of offences against property, the prosecution intend to apply for enhanced sentence against you by virtue of section 29(v) of the Minor Offences Ordinance No. 3 of 1955." The magistrate took into consideration the previous conviction under section 411 of the Penal Code.

Held: the introduction of the evidence of previous conviction was not a mere irregularity which could be passed over under section 422 of the Criminal Procedure Code but a breach of a cardinal principle in the administration of justice, and the conviction should be set aside.

Case referred to:—

(1) *Re Mat Junus bin Ridu* [1959] M.L.J. 129.

MAGISTRATE'S CRIMINAL APPEAL.

Soo Wai Sun for the appellant.

Abdul Daim bin Haji Mohd. Zainuddin (Deputy Public Prosecutor) for the respondent.

Ong J.: The appellant appeals against his conviction and sentence of one month's imprisonment on a charge, under section 29(1) of the Minor Offences Ordinance 1955, of being found in possession of a bicycle reasonably suspected of being stolen property and being unable to account satisfactorily how he came by the same.

The following facts were established by the prosecution. A police constable (P.W.1) attached to the Crime Prevention Branch, Ipoh, while checking over bicycles at the Ipoh hospital for one of a certain make reported lost, found a bicycle answering the description, the number of which, stamped on the frame, was found to have been tampered with by filing in an attempt to erase it. When the appellant turned up to collect this bicycle, the police constable announced himself and, upon the appellant's failure to give a satisfactory account of how he came to have the machine, took him and the bicycle into custody. Electric-chemical treatment by the Government chemist revealed the original serial number of the bicycle and evidence thereof was properly admitted. The appellant's explanation was rejected by the learned magistrate. After convicting the appellant, the magistrate took into consideration a previous conviction in 1957 under section 411 of the Penal Code and passed the sentence above stated.

Although I am satisfied that the appellant was rightly convicted, I feel obliged to quash the conviction because, in the course of the trial, the prosecution introduced evidence of the previous conviction by Exhibit P.1, which was a notice as follows:

> *"Sungei Sinam Report No. 1472 of 1963.*
> *Possessions of suspected stolen property, section 29(1) Ordinance, No. 3 of 1955.*
>
> Take notice that in view of your previous conviction of offences against property, the prosecution intend to apply for enhanced sentence against you by virtue of section 29(v) of the Minor Offences Ordinance No. 3 of 1955."

This was not a mere irregularity which can be passed over under section 422 of the Criminal Procedure Code but a breach of a cardinal principle in the administration of justice. What the prosecution should have done was to follow the directions given by Rigby J. in *Re Mat Junus bin Ridu* (1) and I would advise all prosecuting officers to read, digest and bear in mind the judgment therein at all times.

Conviction quashed.

ABDUL RAHMAN TALIB v. SEENIVASAGAM & ANOR.

[O.C.J. (Hepworth J.) December 5, 1964]

[K.L. — Civil Suit No. 789 of 1963]

Libel and Slander — Defences — Qualified privilege — Fair comment — Justification — Defamation Ordinance, 1957, ss. 5, 8 and 9.

The plaintiff claimed damages for slander in respect of a verbal statement made by the 1st defendant, and for libel in respect of written statements made by the 1st and 2nd defendants, alleging corrupt practices by the plaintiff. The alleged slander was contained in a statement made by the 1st defendant at a meeting at the Chinese Assembly Hall, Kuala Lumpur, referring to and repeating what he had already said as a member of Parliament in the House of Representatives, and the alleged libels were contained in (a) a written statement handed over by the 2nd defendant to persons present at that meeting and (b) a written statement handed over by the 1st defendant to a press representative at that meeting. The 1st defendant in his defence pleaded qualified privilege, fair comment and justification. The second defendant pleaded justification. The first defendant put his plea of qualified privilege under five heads submitting that the words complained of constituted:—

(a) a fair and accurate report of a debate or proceeding in Parliament and are privileged at common law;

(b) a Parliamentary report published by or under the authority of the House and are privileged by virtue of section 28 of the Houses of Parliament (Privileges and Powers) Ordinance, 1952;

(c) information to the public on a matter of public interest;

(d) a communication in which he and the persons to whom the statement was made had a common interest;